

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

CAPSOURCE, INC.,
STEPHEN J. BYRNE, and
GREGORY P. HERLEAN
Defendants.

Case No. 2:20-cv-02303-RFB-DJA

**[PROPOSED] ORDER ENFORCING STAY
OF LITIGATION**

As amended to reflect the language of the
Receivership Order (ECF No. 17)

This matter has come before this Court upon motion of the Plaintiff United States Securities and Exchange Commission (“SEC”) to enforce an order staying certain litigation.

On August 26, 2022, the Court entered an order appointing a receiver of Defendant CapSource, Inc. (“CapSource”). Among other things, the order contained the following provisions that stayed certain litigation involving the Receiver, CapSource, or both:

29. As set forth in detail below, all persons are stayed from commencing, prosecuting, or continuing the following proceedings, excluding the instant proceeding and all police or regulatory actions of the Commissioner related to the above-captioned enforcement action, until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Defendants, including subsidiaries and partnerships; or, (d) any of the Receivership Defendants’ past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as “Ancillary Proceedings”).

1 30. The parties to any and all Ancillary Proceedings are enjoined from
2 commencing or continuing any such legal proceeding, or from taking any action,
3 in connection with any such proceeding, including, but not limited to, the issuance
4 or employment of process.

ECF No. 17 ¶¶ 29-30 (“Stay Order”).

5 On April 21 and 24, 2023, certain parties filed three separate civil proceedings (“Civil
6 Proceedings”) that named CapSource and CapSource’s former principals as defendants:

- 7 1. *Arizona Rehab Campuses, LLC, et al. v. CapSource, Inc. et al*, No. A-23-869439-B,
8 filed on 04/21/2023;
- 9 2. *5th Avenue Estates, LLC, et al. v. CapSource, Inc. et al*, No. A-23-869523-B, filed
10 on 04/24/2023; and
- 11 3. *Texas 156, LLC et al. v. CapSource, Inc. et al.*, No. A-23-8699520-B, filed on
12 04/24/2023.

13 In its motion to enforce, the SEC contends that the plaintiffs in the Civil Proceedings
14 violated the Stay Order but, to avoid unnecessary litigation and to preserve the assets of CapSource
15 Inc., the SEC has agreed to relief designed to bring the Civil Proceedings into compliance with the
16 Stay Order. The CapSource Receiver and the plaintiffs to the Civil Proceedings consent to the
17 request.

18 Based on the above, **IT IS HEREBY ORDERED:**

- 19 1. The Stay Order is modified to retroactively permit the filing of complaints in the
20 three Civil Proceedings;
- 21 2. Consistent with paragraph 29 of the Stay Order, the Civil Proceedings are stayed in
22 all respects, and any applicable statutes of limitation are tolled, until further Order of this Court;
- 23 3. Consistent with paragraph 30 of the Stay Order, the parties to the Civil Proceedings
24 are enjoined from commencing or continuing any such legal proceeding, or from taking any action,
25 in connection with any such proceeding, including, but not limited to, the issuance or employment
26 of process.
- 27 4. The SEC is directed to provide a copy of this Order to counsel for plaintiffs in the
28 Civil Proceedings;

1 5. Counsel for plaintiffs in the Civil Proceedings are directed to take reasonable steps to
2 ensure that the court and named parties in each of Civil Proceedings receive notice of the Stay
3 Order and this Order, and to confirm to counsel for the SEC in this case that such steps have been
4 taken.

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6 **IT IS SO ORDERED, this 14th day of June, 2023,**

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11 DANIEL J. ALBREGTS
12 UNITED STATES MAGISTRATE JUDGE
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